

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

JAMES ELMER SHAW,

Plaintiff,

vs.

DENNIS KAEMINGK, SECRETARY OF
CORRECTIONS; INDIVIDUAL AND
OFFICIAL CAPACITY; ROBERT
DOOLEY, DIRECTOR OF PRISON
OPERATIONS; INDIVIDUAL AND
OFFICIAL CAPACITY; DARIN YOUNG,
WARDEN; INDIVIDUAL AND OFFICIAL
CAPACITY; JENNIFER DRIESKE,
DEPUTY WARDEN; INDIVIDUAL AND
OFFICIAL CAPACITY; JENNIFER
STANWICK-KLEMIK, DEPUTY
WARDEN; INDIVIDUAL AND OFFICIAL
CAPACITY; TROY PONTO, ASSOCIATE
WARDEN; INDIVIDUAL AND OFFICIAL
CAPACITY; ARTHOR ALCOCK,
ASSOCIATE WARDEN; INDIVIDUAL
AND OFFICIAL CAPACITY; DAVID
LENTSCH, UNIT MANAGER;
INDIVIDUAL AND OFFICIAL CAPACITY;
DERRICK BIEBER, UNIT MANAGER;
INDIVIDUAL AND OFFICIAL CAPACITY;
AL MADSON, UNIT MANAGER;
INDIVIDUAL AND OFFICIAL CAPACITY;
JOSH KLEMIK, UNIT MANAGER;
INDIVIDUAL AND OFFICIAL CAPACITY;
TAMMI MERTINS-JONES, CULTURAL
ACTIVITIES COORDINATOR;
INDIVIDUAL AND OFFICIAL CAPACITY;
ELIZABETH VITETTA, UNIT
COORDINATOR; INDIVIDUAL AND
OFFICIAL CAPACITY; BRITINEY

4:17-CV-04116-KES

ORDER GRANTING MOTION TO FILE
DOCUMENTS UNDER SEAL FOR IN
CAMERA INSPECTION

ULMER, UNIT COORDINATOR; INDIVIDUAL AND OFFICIAL CAPACITY; MELISSA MATURAN, ADMINISTRATIVE REMEDY COORDINATOR; INDIVIDUAL AND OFFICIAL CAPACITY; STEVE BAKER, MAJOR; INDIVIDUAL AND OFFICIAL CAPACITY; LINDA MILLER- HUNHOFF, MAIL SUPERVISOR; INDIVIDUAL AND OFFICIAL CAPACITY; SHARRON REIMANN, MAILROOM; INDIVIDUAL AND OFFICIAL CAPACITY; JORDAN STOREVIK, MAILROOM; INDIVIDUAL AND OFFICIAL CAPACITY; NICK ANDERSON, CORRECTIONAL OFFICER, SDSP; PRESTON PERRETT, CORRECTIONAL OFFICER; INDIVIDUAL AND OFFICIAL CAPACITY; JUDY JACOBS, CORRECTIONAL OFFICER; INDIVIDUAL AND OFFICIAL CAPACITY; LISA FRASIER, CORRECTIONAL OFFICER; INDIVIDUAL AND OFFICIAL CAPACITY; NICK REDDMAN, TEACHER; INDIVIDUAL AND OFFICIAL CAPACITY; DR. MARY CARPENTER, MD; INDIVIDUAL AND OFFICIAL CAPACITY; ER REGIER, MD; INDIVIDUAL AND OFFICIAL CAPACITY; BRAD ADAMS, PA-C; INDIVIDUAL AND OFFICIAL CAPACITY; JESSICA SCHREURS, RN; INDIVIDUAL AND OFFICIAL CAPACITY; HEATHER BOWERS, RN; INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN DEPARTMENT OF HEALTH/CORRECTIONAL HEALTH SERVICE (DOH/CHS) EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; CBM CORRECTIONAL FOOD SERVICES, INDIVIDUAL AND OFFICIAL CAPACITIES; JOHN TWEIRWEILLER, CBM DISTRICT MANAGER; INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN CBM EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; DELMER	
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WALTER, CONTRACTED DOC ATTORNEY; INDIVIDUAL AND OFFICIAL CAPACITY; AND MARK BIDNEY, CONTRACTED DOC PARALEGAL; INDIVIDUAL AND OFFICIAL CAPACITY;	
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Defendants.

Defendants, Steve Baker, Derrik Bieber, Jennifer Drieske, Tammi Mertens-Jones, Linda Miller-Hunhoff, Jordan Storevik, Elizabeth Effling, Darin Young, Robert Dooley, Jennifer Stanwick-Klimek, and Dennis Kaemingk, move to seal copies of the magazines at issue in plaintiff's lawsuit. Docket 226. Defendants state that the magazines were rejected and not delivered to plaintiff because they were found to contain "nudity" or "sexually explicit" content, in violation of South Dakota Department of Corrections policy. *Id.* at 1.

Defendants assert that if the magazines themselves are attached as exhibits to the affidavits filed with the court and served on plaintiff, plaintiff will have a copy of the very materials that defendants refuse to provide him. *Id.* Courts have found that inmates may not obtain materials through litigation that had been denied by their penological institution. *See Roberts v. Apker*, 570 F. App'x 646, 649-50 (9th Cir. 2017); Order Granting Motion to Seal, *Maday v. Dooley*, 4:17-cv-04168-KES (D.S.D. Nov. 8, 2018); Order Granting Motion to File Documents Under Seal for In Camera Inspection, *Hughbanks v. Dooley*, 4:10-cv-4064-KES (D.S.D. May 3, 2011); *Lindell v. McCaughtry*, No. 01-C-209-C, 2003 WL 23198120 at *1 (W.D. Wis. July 21, 2003). Here, defendants provided plaintiff with a summary of the denied materials along with specific

images and photos that led defendants to conclude that the material contained “nudity” and was “sexually explicit.” “While [plaintiff] may not be able to view the [materials] he was denied, he has sufficient information to challenge defendants’ reasons for denying him the [materials].” Order Granting Defendants’ Motion to File Documents Under Seal for In Camera Inspection at 4, *Hughbanks*, 4:10-cv-4064-KES.

Good cause appearing, it is

ORDERED that defendants’ motion to file documents under seal for in camera inspection (Docket 236) is granted.

DATED March 9, 2020.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE